

# CALCUTTA HIGH COURT

Brindaban Chandra Putatunda

Vs

Kashi Chandra Putatunda

(Jack ,J.)

18.12.1936

## JUDGMENT

### **Jack, J.**

1. These proceedings have arisen out of a suit in which the plaintiffs sought to have an award filed and judgment pronounced in terms of the award under the provisions of para. 21, Sch. 2, Civil P.C.

2. The plaintiffs' case was that they and the defendants were five brothers. Owing to dispute between them in connection with their moveable and immovable properties, they unanimously nominated one Bepin Behari Putatunda as arbitrator to settle the disputes. Thereupon the arbitrator heard the parties, considered the evidence adduced by them and executed an award on 15th Agrahayan, 1338. It was duly pronounced and the plaintiffs asked for an order of the Court under para. 21, Sch. 2, Civil P.C., that a decree be passed in terms of the award.

3. On various grounds the parties appealed against this decree in the Court of appeal below; and there has also been an appeal to this Court. But under the provisions of para. 16 (2), Sch. 2, Civil P.C., no appeal lies from such a decree except in so far as the decree is in excess of, or not in accordance with, the award; and inasmuch as it does not appear that the decree was in excess of, or not in accordance with the award, no appeal lies, and in fact the appeal is not pressed. The appeal is, therefore, dismissed but without costs. In this connection, the appellants also have made an application in revision under Section 115, Civil P.C., on various grounds. In view of the findings of fact arrived at by the Court of appeal below, the only grounds in the petition for revision, which can be said to be of any substance, are (1) ground No. 5, i. e., that the learned District Judge acted illegally and with material irregularity in refusing to give effect to the solenamah, and (2) that the learned Judge acted without jurisdiction in filing the award inasmuch as it was unregistered, and therefore, under the provisions of Section 49 of the Registration Act, not admissible in evidence.

4. The solenamah above referred to is mentioned in para. 13 of the petition for revision. It was filed on 11th January 1933 before the District Judge praying that the said solenamah might be made part of the decree, the plaintiffs having given up their claim for enforcement of the award, and that the appeal and the cross-appeal be dismissed. It was further stipulated that the parties

would take a copy of the said solenamah decree and get it registered in the Registration Office. By this solenamah the plaintiffs gave up their rights under the achalnamah and the award, and the parties compromised all their differences and made an amicable arrangement of all disputes. It appears to us that the learned District Judge rightly refused to pass such a compromise decree in proceedings under Sch. 2, Civil P.C. On an application for the filing of an award, the only form which such a decree should take was an order that the award should be filed, and as the parties obviously did not unite in praying that the application should be dismissed, it was the duty of the Judge to proceed to consider whether the award which had been submitted should be filed. Thus in his order refusing to pass a decree in terms of the compromise, and in the subsequent order for filing the award, the learned District Judge did not act without jurisdiction, nor did he act irregularly in the exercise of his jurisdiction.

5. We now deal with the second ground as to the filing of the award although it was unregistered. It is true that since the amendment of Section 17, Registration Act, in 1929, by Section 10, T.P. (Amendment) Supplementary Act, in accordance with which the words "and any award" were deleted from 01. (2)(vi), Section 17, a private award is no longer exempted from the category of documents compulsorily registrable when it falls within Clause (1)(b), Section 17, and therefore the award in this case not being registered, was under Section 49, Registration Act, not admissible as evidence of a transaction affecting the property. It is therefore urged that it could not be filed and a decree could not be passed in terms of the award. In support of this contention the decision in *Jitendra Nath De v. Nagendra Nath De* is referred to. On the other hand it is urged that since the award was merely filed as the basis of a decree, it was not being used as evidence of a transaction affecting the property. But clearly, in order to decide whether an award is to be filed, the Court under para. 21, Sch. 2, Civil P.C., has to consider the terms of the award with reference to the matters referred to in para. 14, Sch. 2, and for that purpose it is being admitted as evidence of a transaction purporting to affect rights in immovable property, for a private award operates to affect such rights apart from the passing of a decree based on the award. It appears therefore that directing the award to be filed, though unregistered, the learned Judge was transgressing the provisions of Section 49, Registration Act. and in so doing acted illegally in the exercise of his jurisdiction.

6. It only remains to consider whether this is a case in which we should exercise our powers of revision under Section 115, Civil P.C. We think it is not such a case inasmuch as the objection to the filing of the award on the ground that it was unregistered was not raised in the trial Court, nor even in the Court of appeal below. Had this point been raised in the trial Court, the award could have been registered within four months of the time it was given, and this would have cured the irregularity. But the principal ground for non-interference in this case in revision, is that from the findings arrived at by the Court of appeal below in a carefully considered judgment, it appears that the conduct of the petitioners has not been bona fide, and it was only when Gopal and Brindaban, defendants 1 and 2, found that the award was not to their liking that they thought of attacking it. Moreover it appears that an application under Section 115, Civil P. C, on the same grounds, has already been rejected by this Court. It was filed by Gopal, defendant 2, and the evidence is that Gopal, and Brindaban the present petitioner, were throughout acting mutually for each other in connexion with the arbitration proceedings. The only point that gives us some anxiety is that the interests of the widow and daughter of the sixth brother Is war (a co-sharer of the joint property) may suffer through the decree. But since they were not parties to the reference to arbitration, they are not bound by the award or decree. Moreover we are given to understand

by the advocate for the opposite party that their interests will not suffer. The application is therefore dismissed with costs, hearing fee three gold mohurs.

**Patterson, J.**

7. I agree.